

ESTTA Tracking number: **ESTTA188821**

Filing date: **01/25/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	PomWonderful LLC
Granted to Date of previous extension	01/27/2008
Address	11444 W. Olympic Blvd., 10th Floor Los Angeles, CA 90064 UNITED STATES

Attorney information	Douglas N. Masters LOEB & LOEB LLP 321 N. Clark St., Suite 2300 Chicago, IL 60610 UNITED STATES chicagopto@loeb.com, dmasters@loeb.com, sceresnie@loeb.com, aocasio@loeb.com Phone:312-464-3100
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Applicant Information

Application No	77104794	Publication date	07/31/2007
Opposition Filing Date	01/25/2008	Opposition Period Ends	01/27/2008
Applicant	Deniz and Gunzel 52 E. Union Blvd. Bethlehem, PA 18018 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Fruit juices

Applicant Information

Application No	77193149	Publication date	11/27/2007
Opposition Filing Date	01/25/2008	Opposition Period Ends	
Applicant	Metin T. Deniz and Murat Guzel 52 E. Union Blvd. Bethlehem, PA 18018 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Fruit juices

Applicant Information

Application No	77104804	Publication date	07/31/2007
Opposition Filing Date	01/25/2008	Opposition Period Ends	
Applicant	Deniz and Guzel 52 E. Union Blvd. Bethlehem, PA 18018 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Fruit juices

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2637053	Application Date	04/24/2001
Registration Date	10/15/2002	Foreign Priority Date	NONE
Word Mark	POM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2002/04/11 First Use In Commerce: 2002/04/11 FRUIT JUICES		

U.S. Registration No.	3047447	Application Date	10/06/2003
Registration Date	01/24/2006	Foreign Priority Date	NONE
Word Mark	POM		
Design Mark			
Description of Mark	The mark contains the word POM with a heart design in place of the letter "O".		
Goods/Services	Class 031. First use: First Use: 2001/10/15 First Use In Commerce: 2001/10/15 FRESH FRUITS Class 032. First use: First Use: 2002/09/16 First Use In Commerce: 2003/01/13 FRUIT JUICES and FRUIT JUICE CONCENTRATES		

U.S. Registration No.	2640835	Application Date	04/19/2001
Registration Date	10/22/2002	Foreign Priority Date	NONE
Word Mark	POM WONDERFUL		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 031. First use: First Use: 2002/04/11 First Use In Commerce: 2002/04/11 FRESH FRUITS

U.S. Registration No.	2864641	Application Date	08/04/2003
Registration Date	07/20/2004	Foreign Priority Date	NONE
Word Mark	POM WONDERFUL		
Design Mark			
Description of Mark	THE MARK CONTAINS THE WORDS POM WONDERFUL, WITH A HEART DESIGN IN PLACE OF THE LETTER "O" IN THE WORD "POM".		
Goods/Services	Class 031. First use: First Use: 2001/10/15 First Use In Commerce: 2001/10/15 FRESH FRUITS Class 032. First use: First Use: 2002/09/16 First Use In Commerce: 2003/01/13 FRUIT JUICES and FRUIT JUICE CONCENTRATES		

U.S. Registration No.	2780314	Application Date	12/11/2001
Registration Date	11/04/2003	Foreign Priority Date	NONE
Word Mark	POM WONDERFUL		
Design Mark			
Description of Mark	The mark contains the word "POM", and the word "WONDERFUL" in red, the same red shade of which is also within the heart of the "POM".		
Goods/Services	Class 031. First use: First Use: 2001/10/15 First Use In Commerce: 2001/10/15 FRESH FRUITS Class 032. First use: First Use: 2001/10/15 First Use In Commerce: 2001/10/15 FRUIT JUICES AND FRUIT JUICE CONCENTRATES		

U.S. Registration No.	2644365	Application Date	07/16/2001
Registration Date	10/29/2002	Foreign Priority Date	NONE
Word Mark	POM WONDERFUL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 2001/10/06 First Use In Commerce: 2001/10/06 FRESH FRUITS		

U.S. Registration No.	2960192	Application Date	12/03/2002
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	POMARITA		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class 033. First use: First Use: 2005/02/20 First Use In Commerce: 2005/02/20 Prepared alcoholic cocktail		
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U.S. Registration No.	2981525	Application Date	08/20/2003
Registration Date	08/02/2005	Foreign Priority Date	NONE
Word Mark	POMARITA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2005/02/20 First Use In Commerce: 2005/02/20 FRUIT JUICE FOR USE IN CONNECTION WITH PREPARED ALCOHOLIC COCKTAILS		

U.S. Registration No.	2960193	Application Date	12/03/2002
Registration Date	06/07/2005	Foreign Priority Date	NONE
Word Mark	POMTINI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 033. First use: First Use: 2005/02/20 First Use In Commerce: 2005/02/20 Prepared alcoholic cocktail		

U.S. Registration No.	2981524	Application Date	08/20/2003
Registration Date	08/02/2005	Foreign Priority Date	NONE
Word Mark	POMTINI		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2005/02/20 First Use In Commerce: 2005/02/20 FRUIT JUICE FOR USE IN CONNECTION WITH PREPARED ALCOHOLIC COCKTAILS		

U.S. Registration No.	3013614	Application Date	08/20/2003
Registration Date	11/08/2005	Foreign Priority Date	NONE
Word Mark	POM BEACH		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 032. First use: First Use: 2005/02/20 First Use In Commerce: 2005/02/20 FRUIT JUICE		

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Sharon A.Ceresnie/
Name	Sharon A. Ceresnie
Date	01/25/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 77/104,794:

Mark: POMESMART

Published in the *Official Gazette* of July 31, 2007

In the Matter of Application Serial No. 77/193,149:

Mark: POMESMART and Design

Published in the *Official Gazette* of November 27, 2007

In the Matter of Application Serial No. 77/104,804:

Mark: POMESMART ALL FROM NATURE FOR YOUR HEART and Design

Published in the *Official Gazette* of July 31, 2007

POMWONDERFUL LLC,)	
)	
Opposer,)	
)	Opposition No. _____
v.)	
)	
METIN T. DENIZ AND MURAT GUZEL,)	
)	
Applicant.)	




CONSOLIDATED NOTICE OF OPPOSITION


PomWonderful LLC (“Opposer”), a Delaware corporation located and doing business at 11444 W. Olympic Blvd., Los Angeles, CA 90064, believes it will be damaged by the registration of Application Serial Nos. 77/104,794, 77/193,149, and 77/104,804, in International Class 32 for “fruit juices,” for **POMESMART, POMESMART and Design, and POMESMART ALL FROM NATURE FOR YOUR HEART and Design** (“Applicant’s Marks”), filed by Metin T. Deniz and Murat Guzel (“Applicant”), and hereby opposes the same.

As grounds for this opposition, Opposer alleges:

1. Opposer is the largest grower and distributor of pomegranates and pomegranate juices in the United States. Since long prior to the filing dates of Applicant's Application Serial Nos. 77/104,794, 77/193,149, and 77/104,804, Opposer has extensively marketed fresh pomegranate fruit and pomegranate juice in interstate commerce under or in connection with its distinctive POM, POM WONDERFUL, POM and Heart Design, and POM WONDERFUL and Heart Design marks, and other marks comprised of the distinctive term POM, including POMARITA, POMTINI, POM BEACH, and POMEBERRY, (collectively, the "POM Marks").

2. Opposer owns several registrations for the POM Marks for fresh fruits and fruit juices with the United States Patent and Trademark Office ("PTO"). Opposer's registrations include, but are not limited to:

<u>TRADEMARK</u>	<u>GOODS</u>	<u>REG. NO.</u>
POM	Fruit juices.	2,637,053
	Fresh fruits. Fruit juices and fruit juice concentrates.	3,047,447
POM WONDERFUL	Fresh fruits.	2,640,835
	Fresh fruits. Fruit juices and fruit juice concentrates.	2,864,641
	Fresh fruits. Fruit juices and fruit juice concentrates.	2,780,314

<u>TRADEMARK</u>	<u>GOODS</u>	<u>REG. NO.</u>
	Fresh fruits.	2,644,365
POMARITA	Prepared alcoholic drinks.	2,960,192
POMARITA	Fruit juice for use in connection with prepared alcoholic cocktails.	2,981,525
POMTINI	Prepared alcoholic cocktail.	2,960,193
POMTINI	Fruit juice for use in connection with prepared alcoholic cocktails.	2,981,524
POM BEACH	Fruit juice.	3,013,614

The registrations are valid, subsisting, and owned by Opposer. Registration Nos. 2,637,053 and 2,640,835 are incontestable pursuant to 15 U.S.C. §§1064 and 1115(b).

3. Since long prior to the filing date of Application Serial Nos. 77/104,794, 77/193,149, and 77/104,804, Opposer's POM Marks for its fresh fruits and fruit juices have constituted a family of marks.

4. Opposer has sold millions of dollars worth of goods in connection with its POM Marks.

5. Opposer has spent significant sums of money advertising and promoting its POM Marks throughout the United States.

6. By virtue of the popularity of Opposer's goods offered in connection with the POM Marks, and its advertising and promotion of the POM Marks, Opposer has built up and now owns an extremely valuable goodwill which is symbolized by its POM Marks.

7. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant made actual use of the mark POMESMART prior to February 12, 2007, the filing date of Application Serial No. 77/104,794.

8. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant made actual use of the mark POMESMART and Design prior to May 30, 2007, the filing date of Application Serial No. 77/193,149.

9. Upon information and belief, neither Applicant nor any predecessor or related company of Applicant made actual use of the mark POMESMART ALL FROM NATURE FOR YOUR HEART and Design prior to February 12, 2007, the filing date of Application Serial No. 77/104,804.

10. Applicant's use of Applicant's Marks for "Fruit juices" in International Class 32 ("Applicant's Goods") would be without Opposer's consent or permission.

11. Applicant's proposed use of Applicant's Marks for Applicant's Goods is likely to cause confusion, mistake, or deception in that consumers are likely to believe Applicant's Goods are Opposer's products, or the products of a person or company that is sponsored, authorized or licensed by, or in some other way legitimately connected with, Opposer.

Because the subject matter of the oppositions to Application Serial Nos. 77/104,794, 77/193,149, and 77/104,804 is the same, and to avoid inconsistent results, Opposer asks that

the oppositions to Application Serial Nos. 77/104,794, 77/193,149, and 77/104,804 be consolidated in this one action.

WHEREFORE, Opposer respectfully requests that this opposition be sustained and that Application Serial Nos. 77/104,794, 77/193,149, and 77/104,804 be denied registration.

Please debit our Deposit Account No. 502876 for the \$900 filing fee and for any additional necessary fees.

Please address all correspondence to Douglas N. Masters, Esq., Loeb & Loeb LLP, 321 N. Clark Street, Suite 2300, Chicago, Illinois 60610.

Date: January 25, 2008

LOEB & LOEB LLP

By: /s/ Sharon A. Ceresnie
Douglas N. Masters
Sharon A. Ceresnie
321 North Clark St., Suite 2300
Chicago, Illinois 60610
Telephone: (312) 464-3100
Facsimile: (312) 464-3111

Attorneys for Opposer

CERTIFICATE OF SERVICE

I, Angela Ocasio, hereby certify that a copy of this **CONSOLIDATED NOTICE
OF OPPOSITION** has been served upon:

Damon A. Neagle
Design IP
5100 W. Tilghman St. Ste. 205
Allentown, PA 18104-9123

first class mail, postage prepaid, on this 25th day of January, 2008.

/s/ Angela Ocasio_____